

# N.A.A.E.

National Association of Agriculture Employees

## NEWSLETTER



### *Inside This Issue...*

**A Message from Our President**

**What We're Workin' On**

**CONVENTION!**

**By-Laws Amendments**

**Facebook and NAAE**

**Exciting Garbage News**

**Shutdown Follies**

**Foreign TDY Medical Clearance**

**What's a FACOSH? B'gosh!**

**The Legal Side—Back Pay**

**OUR Web Site <http://www.aginspectors.org>**



## **A Message from Our President**

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*Mike Randall*

### ***Sarah Moves On***

With this newsletter, we bid a fond and, in some ways, a sad farewell to Sarah Clore Rehberg. Sarah has accepted a position with APHIS Labor Relations, a significant promotion, and will continue to work from the Romulus, Michigan office. We will miss her greatly. Sarah has been involved with the NAAE National for more than 14 years serving as National Secretary, National Vice President, and finally President. We thank Sarah for faithfully representing us, often above and beyond the call of duty, and I assure you it has been a great pleasure working side-by-side with her these many years. I have learned a lot.

Sarah is a bridge-builder and a peacemaker. Not all of us come from this same union mold. She has demonstrated these special diplomatic qualities as a founder of both the USDA and PPQ Labor Forums. Sarah was the mover on getting our Green Book Contract finished after nearly 20 years of on-again off-again concentrated aggravation, sometimes call collective bargaining. She has also been involved in many a grievance and dispute mediation in her years as a union officer, bringing the vast majority of them to a successful conclusion without engaging outside dispute resolution specialists. Perhaps her biggest contribution to the Union and to labor-management peace and cooperation has, however, been her active hand in forcing the Agency to engage in good-faith Pre-decisional Involvement, better known as PDI, with NAAE.

Labor Relations needs people like Sarah, especially when the current government is in a conciliatory mood towards labor and employees. This lessening of the tensions has been most apparent

as demonstrated by the current APHIS Labor Relations team, given its make-up of folks mostly from the Postal Service, and its on-going commitment to engage in PDI at all levels.

Not everyone trained in the labor relations background is prepared to exhibit this “conciliatory” attitude. In fact, this quality is rare in labor relations people on either side of the labor-management aisle. These special people have to come from somewhere; in this case, that person came from NAAE. Sarah becomes a key, needed player on the LR staff. It can only benefit immensely from her hard work, dedication, and contributions.

We miss her dearly. I miss her like a bale o’ hay fell on my head. Sarah really hasn’t gone anywhere. She still has the same number, and I bet she’d really appreciate a call or an e-mail just to say “hi.”

### ***Where Are We At?***

So, where are we at? Your union Executive Committee is in able hands. I have been acting as National President since mid-summer when Sarah’s temporary detail to Labor Relations began. Now that Sarah’s position is permanent, I became President and **Arlo Wiltenburg** was appointed National Vice President in accordance with the National By-Laws. Arlo comes to the job well-prepared as a former NAAE Eastern Region VP and Assistant Eastern Region VP, as well as a local officer in several capacities for over 15 years. I have been involved with NAAE National Executive Committee for nearly 28 years as Western Region VP, National President, National VP –and now as President again.

There was no “break-in” period for me for the latest President’s job—just the rude awakening that there is now twice as much for me to do as when I was President seven years ago. Pre-decisional Involvement (PDI), telephonic negotiations, briefings from the Agency, Labor Forums, opportunities for comment, etc.—all activities that spring from President Obama’s Executive Order on engaging unions keep the union plate full. It is even busier that when NAAE was the small federal union dealing with two departments when CBP Agriculture split off from PPQ twelve years ago.

It is one thing to be an active participant in all of these Union-Management activities and quite another to also prepare and deliver the official communications, keep track off the due dates, move the paperwork, and keep this baby flyin' powered by rubber bands and a madly pedaling rag-tag band of ne'er-do-wells. In order to assist in this endeavor, we have enlisted the acumen, clear-headedness, and, most importantly, enthusiasm of **Julie Orr** from Atlanta Inspection Station to serve as the first Special Assistant to the President. Julie comes to us with the hard-knocks lessons of local office and extensive committee work on behalf of the National, having served as a special advisor to the National Executive Committee for roughly one year. We welcome Julie to the service of the Executive Committee at a higher level (with greater responsibility and an official title), wish her much luck, and look forward to her input in keeping the National Executive Committee on track.

### **Election Season Begins.**

With this newsletter we usher in the election season. The current Executive Committee completes its term and a new Executive Committee assumes office at the close of our convention April 10-14, 2016 in San Antonio, TX at the historic Menger Hotel on the famous, bustling Riverwalk (more, later in this issue.)

In a few weeks you will be receiving your ballot for the National offices of President, Vice President, Secretary, Treasurer, and Eastern and Western Region Vice Presidents. The election is your turn to decide.

The members of our Election Committee this year are located in Lynden, New Jersey and come from the Inspection Station: The chairperson of the Election Committee will be at the convention as a guest of NAAE to report out the election results. These folks deserve our thanks in advance—it's a lot more than counting, printing, and licking envelopes and stamps!

Who is going to run the union and keep the show on the road? Of course, the National Executive Committee, but-- there is a place for everyone who wants to get involved with NAAE. You can run for

national office, and even if you don't make it, there is still a place for you on the extended Executive Committee, serving in an *ad hoc* advisory capacity or, as mentioned below, on one of the many union committees staffed at the national level. There is plenty more than can be accomplished just by the elected officers. We need your input!

There are a number of national-level labor-management committees the union needs to staff with willing and concerned unit employees. We need you to be the eyes and ears of the union on these committees.

### **National Convention, April 10, 2016, San Antonio, TX**

For starters, you can come to this year's convention. The National will help defray some of the cost—we'll get you there. At the convention, there is always joint labor-management training, a "closed" seminar with our General Counsel Kim Mann, offering private pointers on how to use the Green Book and other tools to get what you want in your workplace, and a series of frank discussions, aimed at problem-solving, among the Executive Committee members and other local presidents in attendance. It's a chance to put faces on the union and Management voices you hear on the phone, and maybe your chance to put your face on a voice that we should all know.

This year's Convention Committee is chaired again by **Victor Zeno**, assisted by Assistant Western Region VP **Kathy Ortega**. It takes a lot of work to pull all the parts together to put on a successful convention. The dates, the location, the schedule, the menu—everything is a choice, or an imperative. The contract with hotel and the caterer has to be negotiated (a union job if ever I heard of one.) Well deserved kudos to the Committee for what I am sure will be one of our better conventions!

## ***What Were Workin' On***

Below you can see lists containing the wide-ranging issues we've been working on at the National and Regional levels—The Pre-Decisional Involvement mandated by President Obama's Executive Order on Labor- Management Relations and Official Notice Items. USDA PDI comes through our presence on the USDA Labor-Management Forum.

### **PDI**

PDI Rating-based Performance Awards  
PDI on effort to convert term positions  
PDI on Selection Process for NIMT  
PDI on Animal Products Risk Based Actions  
PDI - New Soil Permit Category  
PDI Possible relocation of Tennessee SPHD OFFICE  
PDI Revised Technician Utilization Guidelines  
PDI on changes to SNICAS User Guide  
Export Treatments  
Union Briefing concerning Export Treatment Policy  
Response to questions on BRS  
Term to Perm positions  
Revised Technician and Aide position Descriptions  
New State Operations Coordinator Position Description  
Safety & Health Goals and Objectives document  
GSA Survey- 2015 Federal Tenant Satisfaction Survey  
Changes to Hawaii manual  
Health Monitoring Procedure for HPAI Responders  
Severe Weather Closure  
PDI over PR USVI manual  
Performance Management and Use of AD-435E- over critical and non-critical elements  
GPS- negotiability appeals panel  
Use of personal and non-official email  
PDI Safety Concern Form  
New Trade Specialist PD  
PDI Training Program at US Mexico Border Employees  
PDI for PICS Data Technician PD review  
PDI PPQ Awards Guidelines  
PDI APHIS Start up plan  
PDI APHIS Child Care Assistance Program

PDI APHIS Emergency Mobilization Guide and Agency Mandatory Mobilization (AMM)  
PDI Safety and Health Manual  
PDI APHIS Contingency Plan for Operations/shutdown  
PDI National Import Compliance Agreement/ Treatments  
PDI Change Order Process- Changing the way RMA's sent to Office Managers  
PDI on the VERRC proposal for emergency mobilization

### **Official Notice**

Official Notice: Emergency Response to *Ralstonia solanacearum*  
Official Notice: Changes to Internal Security Procedures Due to Presidential and Federal Record Act Amendments of 2014  
Official Notice - Revision of domestic quarantine regulatory requirements  
Union Notification of Implementation - Regulated Garbage  
Official Notice - Export Treatment Policy  
Official Notice - APHIS Directive, 1512.1, Alternatives to Rulemaking  
Official Notification - SITC Updated Standard Operating Procedures  
Official Notice - Rescission of SITC SOPs  
Official Notice - Changes to SITC SOC 19  
Official Notice-ARM Pilot Site in Miami, FL and subsequent nationwide implementation  
Official Notice PHSS/ Pest Identification PD  
ISPM Draft for international standards review  
PHSS/ Identifier blended position  
Notice: Discussions about Field Operations' Organizational Structure  
Implementation of CBP-APHIS 5900 (SITC)  
New Trade Specialist PD  
Severe Weather Closure  
GPS- taken to negotiability appeals panel  
Use of personal and non-official email  
Obligations and Expectations when dealing with the union and BUE

### **APHIS/MRP-PDI**

PDI for APHIS Directive 3190.1- IT  
Use of AD-435E, Performance Plan, Progress Review and Appraisal Worksheet for Non-Supervisory Positions  
Changes to HRDG 4630, weather closures  
PDI on HRDG 4630 Changes (FMLA)  
PDI APHIS Directive 6750.1  
PDI Offer Regarding the USDA Departmental Regulation: Advances in Pay  
PDI on HRDG 4537, Procedures Charts and Forms  
PDI Aphis directive 6800.1 HPAI

## **USDA-Notice**

APHIS Directive 6750.1, Retention and Distribution of Official and Diplomatic Passports

Update the definition of spouse in the HRDG 4630 – FMLA

FY-15 Performance Plan Templates for Bargaining Unit Employees Are Now Available on SharePoint

Official Notice-HRDG 4537 - Update Repayment of Student Loans - Section B

Courtesy Copy for Broadcast message: Safety Stand down Results

## **Other**

PPQ Forum Metrics / Goals

PDC GOV Use Investigation

Request for Union Representative for the Field Operations Regulated Garbage Transition Working Group

Environmental Pay

Position description for Tree Climbers

SOP for Sending Specimens to SEL

Formal Meetings OPM focus group interviews

PPQ Post-Modernization Field Operations Employee Focus Group

MOU review for signed Miami agreement

Green Book Agency Head Review kicked back parts to fix

## ***Results of 2015 By-law Amendments Ballot***

*By: Arlo Wiltenburg, National VP*

In June of 2015, ballots were mailed out to our members with nine proposed amendments to the By-laws of the NAAE Constitution. One of the amendments dealt with removing references to Customs and Border Protection representation, another amendment dealt with accessing the newsletter on the website instead of receiving a paper copy in the mail, two amendments dealt with the NAAE convention (include the month of June with April and May as possible months to hold the convention and the ability to cancel the convention if there are not sufficient funds in the National treasury), three amendments dealt with clarifying language, another amendment dealt with decreasing the number of in-person national executive committee meetings from once quarterly to once yearly, and the last one dealt with the correction of clerical errors within the entire document. The deadline for the ballots was July 17, 2015. A total of 69 ballots were returned.



Article XVIII of the Constitution and By-laws states that the by-laws may be amended by two-thirds of the votes cast. All of the amendments passed with at least 88 percent of the votes cast. If you would like to see a copy of the amended Constitution and By-laws, send an email from a non-government email address to one of the executive committee members email addresses located at [www.aginspectors.org](http://www.aginspectors.org) .

## **Facebook & NAAE**

*By: Julie Orr, Special Assistant to the President*

Did you know that NAAE is on Facebook? Do you know why? It is a way to connect on a different level with bargaining unit employees. NAAE wanted to use it to create that personal connection with union members. Also, because relationships are important, it can be a way to strengthen the union. NAAE's Facebook site is a two-way conversation that starts with listening and helping. It allows members to bring in their own various experiences and knowledge for all to learn from. In addition, it is another forum to engage each other about specific questions and concerns.

You may be concerned about posting on Facebook because you are unsure about who can read it or has access. NAAE has come up with a method for you to securely share your thoughts and issues on line through the NAAE's Facebook site. In order for you to post anything on the site, you must be a union member and all posts will be screened by one of two web moderators from the union. You can feel confident that your posts will only be seen by other union members and not management.

Furthermore, you can legally post your opinions on the NAAE Facebook site. The following questions and answers from Bloomberg Labor and Employment Blog (<http://www.bna.com/social-media-new-b17179923064/>) demonstrate how your rights are protected.

- 1) **What communications are protected under Section 7 of the National Labor Relations Act?** The National Labor Relations Board (NLRB) always has allowed employees to engage in Section 7 "protected concerted activities".

Typically, a concerted activity occurs when two or more employees take action for their mutual benefit about terms and conditions of employment. Traditionally, such activities, including griping about a supervisor or work conditions, were limited to conversations between or

among employees at the water cooler or while getting coffee. This griping is protected under the NLRA as long as it is not purely personal and does not result in an open disruption of work activities.

- 2) How has social media affected the NLRB's view of "protected concerted activities"?** The NLRB has found that a discussion on Facebook between employees about work schedules and their supervisor's negative attitude constituted protected concerted activity.

One of the greatest difficulties for the union is to keep communication lines open between the national union reps and the local union members. This is NAAE's way of saying that we want to hear from you and you have a whole army of union members waiting to assist. Please join in on the conversation today! How do you join? Email Victor Zeno [zenivictor@gmail.com](mailto:zenivictor@gmail.com). He will get you added to the Facebook page, only accessible to our members.

### ***Exciting Garbage News!***

*By: Paul Hodges, Assistant Vice President At-Large*

Regulated Garbage is being passed back to PPQ from VS. Training for Regulated Garbage Leads for each state is being developed by the PDC. There is a working group working with the PDC personnel, policy management, VS, and CBP to develop this training. The working group consists of 3 PHSSs and one SITC officer. There was a face to face meeting in August 2015 at the PDC and another face to face meeting to discuss the training held in November 2015 at the PDC.

### ***Government Shutdown Averted***

*By: Arlo Wiltenburg, National VP*

Another Fiscal Year has come to an end with the threat of a Government Shutdown due to a hiatus in funding. This threat was averted for the time being but could have become a reality again on December 12, 2015. The President said that he would not sign another Continuing Resolution. Fortunately, he did not need to as Congress acted at the eleventh hour to fund all federal programs for FY 2016.

After the 2013 Shutdown, we thought that we had the perfect venue to try to engage PPQ in fixing the "shutdown plan", the PPQ Forum. Developing a PPQ Shutdown Plan was a 2014 metric for the PPQ

Forum, but no plan was even worked on by the Forum in 2014 because a representative from management would not participate even though LR and the Union were willing to discuss the issue. The metric was then carried over as a metric for 2015. A couple of conversations were held to discuss working on a PPQ Shutdown Plan but one of the questions the union had could not be or at least was not addressed, “Could PPQ place employees who have partial funding from non-appropriated funds and partial funding from appropriated funds be categorized as “on-call excepted” during a shutdown furlough?” Labor Relations could not get an answer from either APHIS or Office of Management and Budget (OMB). OMB is the largest component of the Executive Office of the President and assists a wide range of executive departments and agencies implement the priorities of the President. One of the areas that OMB is responsible for is Budget development and execution. Shutdown Plans fall under Budget development and execution. On June 30, 2015, OMB released Circular A-11, Preparation, Submission, and Execution of the Budget

([https://www.whitehouse.gov/omb/circulars\\_a11\\_current\\_year\\_a11\\_toc](https://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc)). Section 124 deals with Agency operations in the absence of appropriation. In Section 124.2, OMB states that Agencies should submit shutdown plans at a minimum of once every two years starting August 1, 2015. Here lies the main issue: APHIS submits the shutdown plan, not PPQ (Agency Shutdown Plans are posted at <https://www.whitehouse.gov/omb/contingency-plans>); PPQ has unique situations and details that do not exist in and aren’t covered by APHIS. An example of this is, PPQ employees use multiple accounting codes on their time sheets. Some of these codes are from appropriated funds and some are from non-appropriated funds (user fee, trust funds, no-year funding, etc).

The APHIS Shutdown Plan (Contingency Plan) only has four categories for furloughed employees:

1. Exempt: Employees who perform functions that are not funded by annually appropriated funds.
2. Excepted: Employees who perform functions that are funded by appropriated funds but these functions may continue, by law, to be performed during a lapse in appropriation.
3. On-call excepted: Employees who perform excepted functions that can be performed in less than an entire day.

4. Furloughed: Employees who perform functions that are funded by appropriated funds and do not meet the requirements to be excepted.

By law, there are only 11 activities that are considered to be excepted activities (Protection of Life and Property). These activities are:

- a) **Medical care of inpatients and emergency outpatient care;**
- b) **Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;**
- c) **The continuance of air traffic control and other transportation safety functions and the protection of transport property;**
- d) **Border and coastal protection and surveillance;**
- e) **Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;**
- f) **Care of prisoners and other persons in the custody of the United States;**
- g) **Law enforcement and criminal investigations;**
- h) **Emergency and disaster assistance;**
- i) **Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;**
- j) **Activities that ensure production of power and maintenance of the power distribution system; and**
- k) **Activities necessary to maintain protection of research property.**

APHIS states in their Shutdown Plan that functions b, d, e, g, h, and k are conducted by APHIS employees. As you can see, conducting functions that are funded by non-appropriated funds are not listed as an excepted activity.

As in 2013, management was not allowed to discuss publicly or with us details or even acknowledge a shutdown may occur until the 11<sup>th</sup> hour. We were provided with Pre-Decisional Involvement (PDI) on the APHIS Contingency Plan on September 29, 2015, **two days** before the possible shutdown. After 6 years, APHIS/PPQ still has no idea what PDI is. We should have been involved in PDI as the shutdown plan was being developed and not a month after it

has been submitted to OMB. We had two conference calls with management concerning the APHIS Contingency Plan and how PPQ was planning on implementing it. As in 2013, PPQ was going to place employees performing functions partially funded by non-appropriated funds into the on call excepted category. We brought up the question again during the first call about if they could actually do this under the APHIS Plan because exempted functions do not meet any of the 11 excepted activities. PPQ stated that this was the only category that was available for them to use under the APHIS Contingency Plan.

After this first call, I looked at some of the other Agency Contingency Plans posted on the whitehouse.gov site listed above. I discovered that the Contingency Plan for Agricultural Marketing Service (AMS) has a partially exempt activities category. It looks like OMB has allowed for and recognized a category to place employees who perform functions that are partially funded by non-appropriated funds. During this same time period, management confidentially supplied us with an excel spreadsheet of employees with the category that the employee was placed in. The spreadsheet had four categories on it; Active Exempt, On call Exempt, Active Excepted, and On call Excepted. No employees were placed in the On call Exempt category.

We pointed out this fourth category to management during the second call and asked why management was not using this fourth category. They replied that they had developed a revised spreadsheet that had employees placed into the on call exempt category. We received this list the day before the potential shutdown. There were a number of discrepancies on this list. We were working on pointing out these discrepancies to management and developing Impact & Implementation proposals to submit to management on October 1<sup>st</sup> if the shutdown occurred. Luckily, Congress passed a continuing resolution to keep the government open until December 11, 2015. Hopefully, we can get management to work on a PPQ Shutdown Plan during this interlude in 2016. Some of the issues that need to be worked out are:

1. Making sure employees are in the right category on the spreadsheet

2. Making sure the plan includes definitions for the 5 categories:
  - Exempt
  - On call Exempt
  - Excepted
  - On call Excepted
  - Furloughed
3. Working out details on how the On call status is going to be implemented
  - Hours that an employee can be contacted for reporting to duty
  - How an employee will be contacted
  - Minimum number of hours that an employee will have to work when called out of furloughed status
  - Will employees conducting partial exempt functions be paid as the employees conducting 100 percent exempt functions? Employees who are fully funded by non-appropriated funds receive their pay checks on time. Would an employee who performs functions 50 percent of the pay period receive payment on time and the other 50 percent if Congress approves that furloughed employees get paid?
  - Will an employee who is partially (a specific percent) funded by non-appropriated funds be allowed to work that percentage of the pay period or will they only be called back if there is an activity scheduled (25 % funded works 10 hours per week, 50 percent % works 20 hours per week, etc.)
  - Make sure an employee is not penalized for failure to answer a report for duty call while in furloughed/on call status

A great source for information on shutdown furloughs is on the Office of Personnel Management's (OPM) website.

<https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>

## **Department of State Foreign TDY Medical Clearance-Uncle Will Pay** *by: Paul Hodges Asst. VP at-large*

The Department of State changed its policy for Federal employees working overseas in 2013. Previously, the requirement for Federal employees working overseas was to require a Department of State medical clearance at sixty days or longer. Now, Federal employees who are working overseas for over thirty consecutive days are now required to get a Department of State medical clearance. There was no protocol for PPQ employees to get this medical clearance. The employee was to obtain this medical clearance from his or her doctor. The employee might have to cover the cost from out of pocket monies, such as co-payments, or other fees not covered by insurance. After **EXHAUSTIVE** negotiations by NAAE with Management the Department of State Medical Clearance is performed by the Federal Occupational Health (FOH), and **NO** out of pocket expenses are incurred by the PPQ employee who is chosen for a foreign TDY of more than thirty days.

## **Federal Advisory Council on Occupational Safety & Health (FACOSH)**

*By: Mark Segall, NAAE VP for Health & Safety*

I have been honored to be selected be on Federal Advisory Council on Occupational Safety & Health (FACOSH). This is the first time that NAAE has been selected to be a member of this council. FACOSH is a Presidential Advisory group that reports to the Secretary of Labor. This council advises the Secretary of Labor on issues concerning occupational safety and health of federal employees. Recommendations are made concerning how to minimize the number of injuries and illness in the federal workplace. The council also encourages each federal executive branch department to maintain occupational safety and health programs. The Council consists of sixteen representatives appointed by the Secretary of Labor. Eight members represent management in Federal departments and agencies .The next eight members are from labor organizations representing federal employees. The appointment is for three years with ability to apply for another term appointment. FACOSH holds at least two meetings per calendar year. The meetings are held at the Department of Labor's Frances Perkins Building Washington, DC. Information concerning FACOSH meetings the agenda and date of the meeting is published in the Federal Register. The meeting minutes and other material presented at the FACOSH meetings are available at [www.regulations.gov](http://www.regulations.gov) which is the Federal e-Rulemaking Portal. You can

also find information on the FACOSH homepage available at [www.osha.gov/dep/facosh/](http://www.osha.gov/dep/facosh/)

The following are a list of some agenda items that were discussed at the FACOSH Meetings:

- FACOSH Emerging Issues Subcommittee-Field Federal Safety& Health Workgroup Updates
- Protecting Our Workers, Ensuring Reemployment (POWER)
- Federal Agencies and Ebola
- Whistleblower Protection Programs
- OSHA's Voluntary Protection Programs and Federal Agencies

## **The Legal Side**

*By: Kim Mann Esq., NAAE General Counsel*

**PPQ Officers and Technicians may be entitled to back pay for overtime assignments even though they did not work them.**

The Federal Labor Relations Authority, in its recent decisions,<sup>1</sup> has clarified its position on the compensatory nature of overtime jobs not worked: federal employees are entitled, under certain circumstances, to receive overtime (or premium-pay) compensation even for jobs they should have worked but did not. To receive that pay, they must satisfy the two-pronged statutory criteria of the Back Pay Act, 5 U.S.C. §§ 5596 *et seq.* They must establish they did not work that overtime (or premium-pay) job as the result of an “unjustified or unwarranted personnel action” of the Agency: the Agency action (1) must have caused the employee to miss his/her overtime (or premium-pay) job and (2) must have been unjustified or unwarranted, *i.e.* the Agency's fault.

Federal regulations of the Office of Personnel Management implement the Back Pay Act. In one, 5 C.F.R. § 550.803, OPM broadly defines an “unjustified and unwarranted personnel action” as —

... an act of commission or an act of omission (i.e. failure to take action or confer a benefit) that an appropriate authority [FLRA, MSPB, or an arbitrator, for example] subsequently determines, on the basis of substantive or procedural defects, to have unjustified or unwarranted under applicable law, Executive Order, rule, regulation, or mandatory personnel

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<sup>1</sup> See, for example, *U.S. DHS, U.S. CBP and NTEU*, 68 FLRA 524 (Apr. 27, 2015).



policy established by an agency or through a collective bargaining agreement.

Based upon this broad definition, anytime an APHIS/PPQ manager or supervisor denies or deprives a PPQ Officer or Technician of the opportunity to work an overtime (or Sunday) assignment and that Agency action violates a collective bargaining agreement, a local contract or MOU, or even a local unwritten established past practice, that PPQ employee is entitled to receive, as back pay under the Back Pay Act, full compensation for that missed job. That includes any overtime pay, premium pay, or nighttime differential the employee would have received had he/she actually worked the job. It should not matter that the supervisor made just an innocent, inadvertent, or unintended mistake or error. The only pertinent question is, did that supervisor's action or omission violate an agreement or a law or regulation?

If the Agency refuses to pay the PPQ Officer or Technician for his/her missed overtime assignment, the PPQ Officer has a legally enforceable remedy, thanks to the NAAE-APHIS/PPQ "Green Book," the national Collective Bargaining Agreement governing PPQ employees and the Agency. He or she may file (or NAAE may file for him/her) a grievance against the Agency for violating the overtime agreement, whether a local contract, an MOU, or a past practice, and, in the grievance, may seek back pay under the Back Pay Act. The grievance must be timely filed, and the grievant must eventually prove all elements required by the Back Pay Act. If successful, the PPQ employee-grievant should also receive, in addition to back pay, interest on the unpaid compensation (dating back to the date the job or jobs should have been worked) and reimbursement for any legal fees the grievant incurs in pursuing his/her back-pay claim through the grievance process.

In *U.S. DHS, U.S. CBP and NTEU*, 68 FLRA 524 (Apr. 27, 2015), NTEU asked FLRA to determine the effect of a national DHS policy issued, without notice to the union, rejecting all local agreements affecting overtime assignments and making changes in local O/T assignment policies. As a result, many DHS/CBP employees lost overtime assignments they would otherwise have worked under the local agreements. The arbitrator concluded that CBP's failure to give NTEU proper notice was an unfair labor practice violating the statute, 5 U.S.C. §§ 7116(a)(1) and (5), and ordered back pay. He found that, but for the Agency's statutory violation, the CBP employees would not have suffered losses of overtime pay. The remedy he ordered was to reconstruct the overtime the employees had lost, using a formula calculating the overtime each CBP employee worked during the fiscal year preceding the violation and projecting that number over the period the employees were denied the opportunity to work overtime.

DHS/CBP attacked the arbitrator's award before FLRA, contending it was too speculative and, contrary to Back Pay Act, did not reflect the actual losses of pay, only the employees' potential losses based upon their expectations of work: in other words, the Agency argued NTEU did not satisfy the Back Pay Act criteria because it failed to prove the eligible employees would in fact have performed the overtime work and received the overtime pay, and the Back Pay Act does not authorize back pay based upon the mere

possibility of working overtime. FLRA rejected DHS/CBP's argument, holding: "under Authority precedent, even if employees do not actually work overtime, they may receive back pay under the BPA [Back Pay Act] if an unjustified and unwarranted personnel action precluded them from working overtime." *U.S. DHS, U.S. CBP and NTEU*, 68 FLRA at 528. This represents the current view of FLRA, replacing a view based upon interpretation of an old U.S. Supreme Court case, *United States v. Testan*, 424 U.S. 392 (1976).

THE END???

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**No! This is the beginning. We Have  
Just Begun to Fight!  
Now More Than Ever! Encourage Your Co-  
Workers to Join! Strength In Numbers!**

**YOUR NATIONAL NAAE REPRESENTATIVES  
(Your Input & Feedback Is Most Welcome) PLEASE MAIL ALL DUES  
WITHHOLDING FORMS TO NAAE NAT'L PRESIDENT FOR SIGNATURE**

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